PUBLIC PROSECUTOR

v.

GOVINDNAN CHINDEN NAIR

HIGH COURT MALAYA, MELAKA
AUGUSTINE PAUL JC
[CRIMINAL APPEAL NO: 41-22-97]
5 JANUARY 1998

CRIMINAL PROCEDURE: *Plea of guilty - Whether credit or discount should be given - Whether plea of guilty entitled accused to lesser punishment - Whether automatic*

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - Whether previous convictions should be considered - Whether public interest prime consideration - Conditions when magistrate can impose full punishment - Subordinate Courts Act 1948, s. 87(2)*

CRIMINAL PROCEDURE: *Sentence - Previous convictions - Whether sentence imposed on accused could be increased - Whether sentence imposed inadequate - Factors to be considered in passing sentence - Whether s. 75 of Penal code could be invoked*

This was an appeal by the prosecution against the sentence that was imposed on the accused who had pleaded guilty to a charge of stealing under s. 379 of the Penal Code ('the Code').

The prosecution contended that the accused had 11 previous convictions, and that the majority of them were convictions under ss. 379, 380 and 454 of the Code. For six of his previous convictions, the accused was sentenced to a term of less than one year; for three of the convictions the term of imprisonment was three years or less; and for two convictions including the last one, the accused was sentenced to a term of five years imprisonment. It was also contended by the prosecution that the magistrate had placed undue emphasis on the guilty plea of the accused and had not considered the element of public interest in imposing the sentence. It was further argued that adequate consideration was not given to the previous convictions of the accused and that s. 75 of the Code ought to have been invoked for the maximum imprisonment of seven years. The issues before the court were: (i) whether s. 75 of the Code was applicable; (ii) whether the magistrate under s. 87(1) of the Subordinate Courts Act 1948 ('the Act') could impose a sentence of seven years; (iii) whether the magistrate was correct in placing emphasis on the guilty plea; and (iv) whether there was merit in the appeal.

Held:

[1] The object of s. 75 of the Code is that when an offender, having been convicted of an offence under Chapter XII or Chapter XVII of the Code punishable with three years' imprisonment or upwards, commits an offence of a similar description, he is liable to increased punishment on the ground that the punishment undergone has had no effect in preventing a repetition of the crime. The section imposes a liability to enchanced punishment, but the extreme punishment need not be inflicted as the provisions of the section are only permissive not obligatory, and they provide for a maximum not a minimium sentence. Recourse should not be had to the section if the punishment provided for the offence is itself sufficient.

[1a] Where it is desired to invoke s. 75 of the Code, a separate charge under that section must be framed and recorded if the accused is to be tried for an offence punishable under it. A charge of having committed an offence after a previous conviction should contain an allegation that the offence has been committed after a previous conviction. What must be stated in the charge are the facts, date and place of the previous conviction. If such a statement has been omitted, the court may add it at any time before sentence is passed, but it cannot be done after sentence is passed.

[1b] In the present case, there was neither a separate charge framed under s. 75 of the Code against the accused before he was sentenced nor was any application made to the court to add it to the charge before the sentence was passed. The court could not take into consideration while passing sentence if it had not been mentioned in the charge. Accordingly, the prosecution could not then seek to invoke the aid of s. 75 of the Code.

[2] Section 87(2) of the Act empowers a magistrate to impose the full punishment prescribed for an offence on a convicted person if he is satisfied that the previous convictions or antecedents of that person warrant such a punishment. Where a magistrate acts under this provision of law, it is mandatory for him to also state his reasons for so acting in writing. If no appeal has been lodged against the sentence, he must transmit the record of proceedings to the High Court so that the High Court may satisfy itself as to the correctness, legality or propriety of the sentence so imposed in the exercise of its special powers. As the sentence that the prosecution had in mind was the maximum allowed by law for the offence in respect of which the accused had been charged,

and was beyond the five-year term of imprisonment that a magistrate may impose as provided by s. 87(1) of the Act, s. 87(2) would be a more appropriate provision for consideration.

[3] The principles governing an appeal against sentence are settled. If a sentence is excessive or inadequate to such an extent as to satisfy an appellate court that when it was passed there was a failure to apply the right principles then intervention by the court is justified. The sentence imposed must not only be within the ambit of the punishable section but it must also be assessed and passed in accordance with established judicial principles.

[3a] In passing sentence public interest must necessarily be one of the prime considerations. A major element of public interest is that justice means justice not only to the accused but also to society. Accordingly, in passing sentence a court has to consider not only the offence and the offender but also the interests of society. Where a person is found to be a persistent offender then it is in the interests of justice that a deterrent sentence should be passed.

[4] An accused person should be given credit or discount for pleading guilty, but the severity of the offence committed may outweigh the mitigating effect of a guilty plea. Thus, there can be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment.

[4a] In the case before the court the learned magistrate, in imposing the sentence, had placed undue emphasis on the guilty plea of the accused. His opinion that a lenient sentence must be imposed following a guilty plea was wrong in law. He had completely overlooked the element of public interest to be served in dealing with a persistent offender like the accused. In the court's opinion the string of previous convictions of the accused had reached such a point that the mitigating factors in his favour had been exhausted. His involvement in crime immediately after coming out of prison, after having served a five-year term, indicated his difficulty in reforming. In his own interest it was best that he re-entered prison for the longest period possible. In the premises, it was the court's view that, that was a proper case where the learned magistrate ought to have acted under s. 87(2) of the Act. Therefore the prison term imposed on the accused was varied and substituted with an order of imprisonment for seven years.

[Appeal allowed.]

Cases referred to:
Abdul Karim [1933] 29 NLR 309 ***(cit)***
Abu Bakar bin Alif v. R [1953] MLJ 19 ***(cit)***
Abdul Wahab v. PP [1970] 2 MLJ 203 ***(cit)***
Daulat Singh [1981] Cr LJ 1347 (4D) ***(cit)***
Doraisami [1886] 9 Mad 284 ***(cit)***
Dungri [1911] 12 PLR 516 ***(cit)***
Haidar [1883] 3 AWN 110 ***(cit)***
Harmohan Deb AIR [1943] Cal 25 ***(cit)***
Leo Say & Ors v. PP [1985] 2 CLJ 155 ***(cit)***
Loh Hock Seng & Anor v. PP [1980] 2 MLJ 13 ***(refd)***
Phillip Lau Chee Heng v. PP [1988] 1 CLJ 873 ***(cit)***
PP v. Abdullah bin Pandak Hassan & Anor [1975] 2 MLJ 276 ***(cit)***
PP v. Jafa bin Daud [1981] 1 MLJ 315 ***(cit)***
PP v. Low Kok Wai [1988] 3 MLJ 123 ***(refd)***
PP v. Ravindran [1993] 1 MLJ 45 ***(cit)***
PP v. Sulaiman Ahmad [1993] 1 MLJ 74 ***(refd)***
PP v. Teh Ah Cheng [1976] 2 MLJ 186 ***(cit)***
PP v. Oo Leng Swee & Ors [1981] 1 MLJ 247 ***(cit)***
R v. Ball 35 Cr App R 164 ***(refd)***
R v. Costen [1989] II Cr App R (S) 182 ***(refd)***
R v. Leo De Cruz [1935] MLJ 1 ***(refd)***
R v. Teo Cheng Lian [1949] MLJ 170 ***(refd)***
Rajcoomar Bose [1873] 19 WR (Cr) 41 ***(cit)***
Re Chong Cheng Hoe & Ors [1966] 2 MLJ 252 ***(cit)***
Sau Soo Kim v. PP [1975] 2 MLJ 134 ***(refd)***
Sia Ah Kew & Ors v. PP [1974] 1 MLJ 125 ***(cit)***
State v. Thampikannu AIR [1970] Ker 251 ***(cit)***
Subramaniam [1916] 1 MWN 327 ***(cit)***
Thatta Rao AIR [1968] AP 17 ***(cit)***
Wong Kai Chuen Philip v. PP [1991] 1 MLJ 321 ***(cit)***
Zaidon Shariff v. PP [1996] 4 CLJ 44 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 152(6)
Courts of Judicature Act 1964, s. 37
Criminal Procedure Code, ss. 173(m)(2), 253
Penal Code, ss. 75, 379, 380, 454, 457
Subordinate Courts Act 1948, s. 87(1), (2)

Other source referred to:
Principles of Sentencing, DA Thomas, p 176

For the appellant - Maziah Abu DPP
Accused in person

Reported by Michele Saw

JUDGMENT

Augustine Paul JC:

The charge preferred against the accused in the Magistrates' Court at Melaka is as follows:

> Bahawa kamu pada 13.1.1997 antara jam 2.30 petang hingga jam 4.00 petang di Kampong Arongan, Pulau Sebang di dalam Daerah Alor Gajah, di dalam Negeri Melaka, dengan niat curang telah mengambil harta yang boleh dipindahkan iaitu wang tunai sebanyak RM3,800 kepunyaan Encik Cha How Lek KP 510724-05-5091 tanpa kebenarannya, oleh yang demikian kamu telah melakukan kesalahan dan boleh dihukum dibawah Seksyen 379 Kanun Keseksaan.

When the charge was read and explained to the accused he pleaded guilty. The learned magistrate was satisfied that the accused understood the nature and consequences of his plea. The prosecution then tendered a statement of facts which disclosed that on 13 January 1997 the complainant who was doing renovation work at certain premises stopped work as it was raining. He placed his purse on a pillar and took a rest. He soon fell asleep. When he woke up he found that cash amounting to RM3800 was missing from his purse. The accused who was one of his workers was also missing. The complainant then made a police report. The accused was arrested on 8 April 1997. He admitted to the police that he had taken the money and had used it to buy items like drugs, clothes and shoes. The accused admitted the facts as read and explained to him and the learned magistrate accepted his plea. In his plea of mitigation the accused prayed for leniency and said that he will not commit any further offences. The prosecution then tendered a list of previous convictions of the accused. He had a total of 11 previous convictions. The first was on 14 March 1980 and the last on 16 February 1994. Most of them were convictions under ss. 379, 380 and 454 of the Penal Code. For six of his previous offences he was sentenced to a term of less than one year imprisonment; three years or less for three offences and five years for two offences including the last one. In sentencing the accused the learned magistrate took various factors into consideration. He considered the fact that the accused had pleaded guilty and was of the view that cases such as *Sau Soo Kim v. PP* [1975] 2 MLJ 134 and *PP v. Sulaiman Ahmad* [1993] 1 MLJ 74 show that a lenient sentence must be imposed following a guilty plea. He felt that credit must be given for a guilty plea as it saves time and costs and that a long prison term will not necessarily reform the accused. He found support for this in the previous five-year term imposed on the accused which did not appear to have had any effect on the accused. Having then considered the plea in mitigation of the

accused he sentenced him to a term of three years imprisonment. He also ordered that the accused be given two strokes of the rottan and that he be subjected to police supervision for a period of one year after his release from prison. The Public Prosecutor appealed against the sentence imposed.

Before me the learned Deputy Public Prosecutor contended that the learned magistrate had placed undue emphasis on the guilty plea of the accused and had not considered the element of public interest in imposing sentence. She added that the learned magistrate had failed to give adequate consideration to the previous convictions of the accused and contended that s. 75 of the Penal Code ('the section') ought to have been invoked to justify the imprisonment of a term of seven years' imprisonment. In his reply the accused prayed for leniency and asked that he be given another chance.

Before I proceed any further I shall deal with the submission of the learned Deputy Public Prosecutor on the applicability of the section which reads as follows:

> Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment for a term of three years or upwards, or having been convicted in any other part of Malaysia, in the Republic of Singapore or in the State of Brunei of an offence of a nature similar to any of those offences, shall be guilty of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall be subject for every such subsequent offence to double the amount of punishment to which he would otherwise have been liable for the same.

In order to satisfy the requirements of the section three conditions must be satisfied. They are:-

(a) the offence must be under either Chapter XII or XVII of the Penal Code;

(b) the previous conviction must have been for an offence punishable with imprisonment for a term of three years or upwards; and

(c) the subsequent offence must also be punishable with imprisonment for a term of three years or upwards.

The object of the section is that when an offender having been convicted of an offence under Chapter XII (offences relating to coin and Government stamps) or Chapter XVII (offences against property) of the Penal Code, punishable with three years' imprisonment or upwards commits an offence of similar description he is liable to increased punishment on the ground that the punishment undergone has had no effect in preventing a repetition of the crime (see *State v. Thampikannu AIR* [1970] Ker 251). The section does not

constitute a substantive offence, but only imposes a liability to enhanced punishment. It must be noted that just because the provisions of the section are attracted in a particular case it does not mean that the extreme punishment provided by the section must be inflicted. The provisions of the section are only permissive and not obligatory. This is borne out by the use of the words "… shall be subject ..." in the section. The section only provides for a maximum sentence; it does not provide for a minimum (see *Harmohan Deb AIR* [1943] Cal 25). The jurisdiction to inflict the enhanced punishment is to be exercised in a judicial manner after taking into consideration the entire circumstances of the case (see *Daulat Singh* [1981] Cr LJ 1347 (4D)). Recourse should not be had to the section if the punishment provided for the offence is itself sufficient. However, where it is desired to invoke the section a separate charge under the section must be framed and recorded if the accused is to be tried for an offence punishable under it (see *Doraisami* [1886] 9 Mad 284; *Dungri* [1911] 12 PLR 516; *Subramaniam* [1916] 1 MWN 327). This accords with the requirement of s. 152(6) of the Criminal Procedure Code which reads as follows:

> If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of increasing the punishment which the court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted the court may add it at any time before sentence is passed.

Form XXVII(III) of the Second Schedule to the Criminal Procedure Code contains a specimen charge for theft after a previous conviction. It reads as follows:

> That you, on or about the day of , at committed theft, and thereby committed an offence punishable under s. 379 of the Penal Code.
>
> And further that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the at of an offence punishable under Chapter XVII of the Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night *(describe the offence in the words used in the section under which the accused was convicted)* which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Penal Code.

A charge of having committed the offence after a previous conviction, therefore, should contain an allegation that the offence has been committed after a previous conviction. What must be stated in the charge are the facts, date and place of the previous conviction (see *Haidar* [1883] 3 AWN 110). If such statement has been omitted, the court may add it at any time before

sentence is passed (see *Abdul Karim* [1933] 29 NLR 309). But it cannot be done after sentence is passed (see *Rajcoomar Bose* [1873] 19 WR (Cr) 41). I interpolate to add that the procedure to be followed when the section is invoked is as prescribed in s. 253 of the Criminal Procedure Code which reads as follows:

> Where the accused charged with an offence committed after a previous conviction for any offence the procedure hereinbefore laid down shall be modified as follows:
>
> (a) the part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
>
> (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge;
>
> (c) if he answers that he has been so previously convicted the court may proceed to pass sentence on him accordingly, but if he denies that he has been so previously convicted or refuses to or does not answer such question the Court or in the case of a trial by jury the jury shall inquire concerning such previous conviction.

In this case no separate charge under the section was framed against the accused before he was sentenced. Neither was any application made to court to add it to the charge before the sentence was passed. Nor can the High Court take it into consideration while passing sentence if it has not been mentioned in the charge (see *Thatta Rao AIR* 1968 AP 17). Accordingly, the prosecution cannot now seek to invoke the aid of the section. I therefore dismissed this submission by the learned Deputy Public Prosecutor.

As the sentence that the prosecution has in mind is the maximum allowed by law for the offence in respect of which the accused has been charged and is beyond the five-year term of imprisonment that a magistrate may impose as provided by s. 87(1) of the Subordinate Courts Act 1948 ('the Act') a more appropriate provision for consideration is s. 87(2) of the Act which reads as follows:

> Notwithstanding sub-s. (1), where a First Class Magistrate has convicted any person and it appears that, by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed by subsection (1) should be awarded, then the First Class Magistrate may award the full punishment authorised by law for the offence of which the person has been convicted and shall record his reason for so doing.

As the Federal Court explained in *Loh Hock Seng & Anor v. PP* [1980] 2 MLJ 13 the prescribing of a maximum penalty in respect of an offence not only marks the limits of the court's discretionary power as to sentence, it also ordinarily prescribes what the penalty should be in the more serious types of cases falling within the relevant class of the offence meriting the maximum punishment prescribed. It is a long and well established principle of sentencing that the legislature in fixing the maximum penalty for a criminal offence intends it only for the worst cases (see *Sia Ah Kew & Ors v. PP* [1974] 1 MLJ 125). Section 87(2) of the Act empowers a magistrate to impose the full punishment prescribed for an offence on a convicted person if he is satisfied that the previous conviction or antecedents of that person warrant such a punishment. Thus the previous conviction and antecedents of a convicted person play a pivotal role in sentencing him. Where a magistrate acts under this provision of law it is mandatory for him to also state his reasons for so acting in writing. It must be noted that s. 37 of the Courts of Judicature Act 1964 provides that where a magistrate has acted under this provision, and no appeal has been lodged against the sentence, he must transmit the record of the proceedings to the High Court so that the High Court may satisfy itself as to the correctness, legality or propriety or otherwise of the sentence so imposed in the exercise of its special powers (see *PP v. Abdullah bin Pandak Hassan & Anor* [1975] 2 MLJ 276). *Abdul Wahab v. PP* [1970] 2 MLJ 203 is an illustration of the use of the power conferred by s. 87(2) of the Act by the High Court. In that case the accused who had pleaded guilty to an offence under s. 457 of the Penal Code had twelve previous convictions. He was sentenced to two years' imprisonment, the maximum that a magistrate may then impose, and six strokes of rottan to be followed by twelve months of police supervision by the learned magistrate. In the course of his judgment Sharma J said at p. 204:

> In view of the provisions of s. 87(2) of the Courts Ordinance I am of the view that the magistrate was empowered to pass the maximum sentence provided under s. 457 of the Penal Code.

His Lordship accordingly set aside the order of the learned magistrate and substituted therefor a sentence of ten years' imprisonment, the maximum term of imprisonment for the offence being fourteen years, and six strokes of the rottan followed by twelve months' police supervision.

Having dealt with the preliminary issues of law I shall now deal with the merits of the appeal.

The principles governing an appeal against sentence are settled. If a sentence is excessive or inadequate to such an extent as to satisfy an appellate court that when it was passed there was a failure to apply the right principles then intervention by the court is justified (see *Abu Bakar bin Alif v. R* [1953] MLJ 19). In *R v. Leo De Cruz* [1935] MLJ 1 Huggard CJ said at the same page:

> In regard to appeals against sentence it has been laid down that the court will not interfere with the sentence, unless the judge has proceeded on wrong principles or given undue weight to some of the evidence.

In *R v. Teo Cheng Lian* [1949] MLJ 170 Gordon-Smith J said at p. 171:

> There must be a manifest error either in law or in considering the facts and circumstances of the case or an omission to consider such facts and circumstances, before the higher court interferes with the discretion undoubtedly vested in the lower court.

Section 173(m)(2) of the Criminal Procedure Code deals with the imposition of sentences in the Subordinate Courts. The subsection reads as follows:

> If the court finds the accused guilty or if a plea of guilty has been recorded and accepted the court shall pass sentence according to law.

The phrase "pass sentence according to law" means that the sentence imposed must not only be within the ambit of the punishable section but it must also be assessed and passed in accordance with established judicial principles (see *Re Chong Cheng Hoe & Ors* [1966] 2 MLJ 252; *PP v. Jafa bin Daud* [1981] 1 MLJ 315; *Phillip Lau Chee Heng v. PP* [1988] 3 MLJ 107). In *R v. Ball* 35 Cr App R 164 the court of Criminal Appeal restated the principles which should guide a court in assessing the appropriate sentence that should be passed in the following terms:

> In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition that, if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal

> in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe.

Thus in sentencing generally the public interest must necessarily be one of the prime considerations (see *PP v. Teh Ah Cheng* [1976] 2 MLJ 186). A major element of public interest is that justice means justice not only to the accused but also justice to society. Accordingly, in passing sentence a court has to consider not only the offence and the offender but also the interests of society. The court acts as a vehicle to show abhorrence to particular types of criminal conduct. This function can be effectively discharged only by passing appropriate sentences to suit the circumstances of a particular case. Where a person is found to be a persistent offender then it is in the interests of justice that a deterrent sentence should be passed (see *PP v. Jafa bin Daud* [1981] 1 MLJ 315). This does not mean that a person with previous convictions is not entitled to lenient treatment. But where a person's previous convictions increase progressively the mitigating factors in his favour diminish correspondingly and may even be exhausted. In this regard useful reference may be made to *Principles of Sentencing* by DA Thomas where the learned author says at p. 176:

> The mitigating effect of good character is not, as has been argued already, confined to the man with no previous convictions; the true position is that it diminishes as the offender's criminal record increases, until it reaches a point at which it is exhausted.

It is generally accepted that an accused person should be given credit or discount for pleading guilty (see *PP v. Ravindran* [1993] 1 MLJ 45). However, as I had the occasion to observe in *Zaidon Shariff v. PP* [1996] 4 CLJ 441 at p. 446:

> Be that as it may, this rule is not a strict rule as the court may, in the exercise of its discretion, refuse to grant any discount in appropriate cases (see *Lee Say & Ors v. PP* [1985] 2 CLJ 155.

In my opinion a guilty plea ought to be considered in favour of the accused only when all other factors and circumstances surrounding the commission of the offence justify such a consideration. Its application in favour of the accused depends on the circumstances of each case (see *Wong Kai Chuen Philip v. PP* [1991] 1 MLJ 321). In *PP v. Low Kok Wai* [1988] 3 MLJ 123 Mohamed Dzaiddin J (as he then was) said at p. 124:

> In the present case, the only mitigating factor is the accused's plea of guilty. It is a principle of sentencing that whenever possible the court should take into account as a mitigating factor the fact that the accused has pleaded guilty. The extent to which a plea of guilty is a mitigating factor must depend on the facts of each case, and it cannot be a powerful mitigating factor when effectively no defence to the charge was available to the accused (see Archbold, 42nd Ed, para 4-480 citing *R v. Davies* [1980] 2 Cr App R (s) 168).

The severity of the offence committed may outweigh the mitigating effect of a guilty plea (see *Leo Say & Ors v. PP* [1985] 2 CLJ 155; *Loh Hock Seng v. PP* [1980] 2 MLJ 13; *PP v. Oo Leng Swee & Ors* [1981] 1 MLJ 247). Where public interest demands a deterrent sentence in the circumstances of a particular case then the effect of such a plea must also give way. In this regard I refer to *R v. Costen* [1989] II Cr App R (S) 182 where Lord Lane said at p. 184:

> But there are certain exceptions, likewise well authenticated in the authorities, to that general rule that discount will be allowed for a plea of guilty. The first and most important exception is the protection of the public. Where it is necessary that a long sentence, if necessary the maximum sentence, should be passed in order to protect the public, in those circumstances a plea of guilty may not result in any discount.

Thus there can be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment.

It is my view that the learned magistrate, in imposing the sentence, had placed undue emphasis on the guilty plea of the accused. His opinion that a lenient sentence *must* be imposed following a guilty plea is clearly wrong in law. It overlooks the fact that the plea must be considered in the light of the other circumstances of the case. His further opinion that a long prison term will not reform the accused as indicated by the previous five-year term cannot be sustained. This does not harmonise with the elementary principles of sentencing and detracts from the rationale of s. 87(2) of the Act. He had completely overlooked the element of public interest to be served in dealing with a persistent offender like the accused. As the learned magistrate had proceeded on wrong judicial principles the sentence imposed by him warranted intervention by this court. In my view the string of previous convictions of the accused had reached such a point that the mitigating factors in his favour had been exhausted. His involvement in crime immediately after coming out of the prison gates after having served a five-year term for an offence under s. 454 of the Penal Code indicates his difficulty in reforming. In his own interest it is best that he re-enters the gates which are so familiar to him for the longest period possible. His incarceration inside for a long term will leave in peace those who are outside. In the premises it was my view that this was

a proper case where the learned magistrate ought to have acted under s. 87(2) of the Act. In the upshot I varied the prison term imposed on the accused and substituted it with an order of imprisonment for seven years. The other orders made by the learned magistrate shall remain.